

**A RESOLUTION BY:
PUBLIC SAFETY & LEGAL ADMINISTRATION COMMITTEE**

A RESOLUTION AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY OF ATLANTA (“CITY”) POLICE DEPARTMENT, TO ENTER INTO AN AGREEMENT WITH LEGACY PAVILION, LLC, IN ORDER TO USE THE HELICOPTER LANDING PAD LOCATED ON THE ROOF OF 300 MARIETTA STREET, NW, AT A RENTAL RATE OF \$1.00 PER YEAR, TO BE CHARGED TO AND PAID FROM 1001 (GENERAL FUND), 240421 (APD POLICE PRECINCT ZONE 5), 5223102 (OPERATING/LEASE RENTAL LAND), 3223000 (PATROL); AND FOR OTHER PURPOSES.

WHEREAS, the Atlanta Police Department (“Department”) desires to enter into an agreement with Legacy Pavilion LLC, in order to use the helicopter landing pad on the roof of 300 Marietta Street, NW for a cost of \$1.00 per year; and

WHEREAS, the Department has determined that the safety and security of the City is greatly enhanced if police helicopters have access to the Helipad at 300 Marietta Street NW.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY RESOLVES that the Mayor be and is hereby authorized, on behalf of the City of Atlanta Police Department, to enter into an agreement (see attached as Exhibit “A”) with Legacy Pavilion, LLC, in order to use the helipad located on the roof of 300 Marietta Street for a period of one calendar year from the date of the execution of the agreement, at a rental rate of \$1.00 per year, to be charged to and paid from **1001 (General Fund), 240421 (APD Police Precinct Zone 5), 5223102 (Operating/Lease Rental Land), 3223000 (Patrol).**

BE IT FURTHER RESOLVED, that the City Attorney be and is hereby directed to review the lease agreement prior to execution by the Mayor.

BE IT FINALLY RESOLVED, that the Agreement shall not become binding upon the City and the City shall incur no obligation or liability hereunder until the same has been signed by the Mayor and attested to by the municipal clerk, and delivered to Legacy Pavilion LLC.

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Legislative Counsel (Signature): Investigator Kurt Braunsroth

Contact Number: (404) 546-4266

Originating Department: Department of Police

Committee(s) of Purview: Public Safety and Legal Administration

Council Deadline: **15 September 2009**

Anticipated Committee Meeting Date(s): 29-30 September 2009

Anticipated Full Council Date: 5 October 2009

Commissioner Signature:

Chief Procurement Officer Signature:

CAPTION

A RESOLUTION AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY OF ATLANTA ("CITY") POLICE DEPARTMENT, TO ENTER INTO AN AGREEMENT WITH LEGACY PAVILION, LLC, IN ORDER TO USE THE HELICOPTER LANDING PAD LOCATED ON THE ROOF OF 300 MARIETTA STREET, NW, AT A RENTAL RATE OF \$1.00 PER YEAR, TO BE CHARGED TO AND PAID FROM 1001 (GENERAL FUND), 240421 (APD POLICE PRECINCT ZONE 5), 5223102 (OPERATING/LEASE RENTAL LAND), 3223000 (PATROL); AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any)

Mayor's Staff Only

Received by CPO:

Received by LC from CPO:

(date)

(date)

Received by Mayor's Office:

Reviewed by:

(date)

(date)

Submitted to Council:

(date)

HELIPAD USE AGREEMENT

THIS HELIPAD USE AGREEMENT (this "Agreement") is made and entered into as of ____ day of September, 2009, between the **ATLANTA POLICE DEPARTMENT**, a City of Atlanta law enforcement agency ("User"), with an address of 675 Ponce de Leon Ave, Atlanta, GA 30308, and **LEGACY PAVILION, LLC**, a Georgia limited liability company ("Owner"), with an address of 300 Marietta Street, NW, Suite 304, Atlanta, Georgia 30313. Owner is the owner of that certain building commonly known as Park Pavilion (the "Building") located at 275 Baker Street, Atlanta, Georgia 30313.

WITNESSETH:

WHEREAS, User desires to use the helicopter landing pad located on top of the roof of the Building (the "Landing Pad") for the purpose of the landing and taking off of a helicopter thereupon and therefrom; and

WHEREAS, Owner desires to grant User permission to use the Landing Pad for the Permitted Use on the terms and conditions as hereinafter set forth.

NOW, THEREFORE, in consideration of the right to use the Landing Pad and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. **Grant of Use.** Subject to the full compliance and acceptance by User of the terms and provisions contained herein, Owner hereby grants to User the right to use the Landing Pad, which shall include the right to land User's helicopter, disgorge persons from the helicopter onto the roof to access the staircase leading down from the roof into the Building and to have such access to the Building via the staircase, to re-enter the roof area and takeoff from the Landing Pad. User shall be directly responsible for repairing any damage to the helipad.
2. **Use.** The Landing Pad, the roof area, the staircase and the Building (collectively, the "Premises") shall be used solely by User for the purpose of: (i) the landing and takeoff of helicopters piloted by approved pilots as described herein and (ii) the delivery and pickup of customers and/or passengers utilizing User's services, if applicable (the "Permitted Use"). User agrees not to use or permit the use of the Premises for any purpose which is illegal, dangerous to life, limb or property beyond those risks normally associated with the operation of a helicopter service, violates any license, permit, or other governmental approval under which Owner operates, or which, in Owner's sole opinion, creates a nuisance or which would increase the cost of, or make voidable, insurance coverage with respect to the Building (the "Impermissible Use"). In the event that User exceeds the scope of the Permitted Use or engages in any form of Impermissible Use, this Agreement shall immediately become null and void and User must, if still located on the Premises immediately vacate the same. User shall cooperate fully in Owner's efforts to maintain security in the Building and shall follow all regulations promulgated by Owner with respect thereto. User will comply with the rules and regulations of the Building as adopted and altered by Owner from time to time. The current rules and regulations applicable to User's use of the Premises are attached hereto as Exhibit A. User agrees not to commit any waste or allow any waste to be committed on any portion of the Premises.
3. **Term.** This Agreement is valid for one (1) year from the date of execution. Owner and User shall have the right to terminate this Agreement with seven (7) days notice to User. Permission for landing and takeoff must be approved for each and every time User desires to land on the Landing Pad by Owner and owner's management company, Legacy Event Productions, LLC (the "Management

Company"). The Agreement shall automatically renew for additional one (1) year terms until notice is given by either party to terminate.

4. Use Fee.

A. User agrees to pay an annual use fee (the "Use Fee") to Owner in consideration for the use of the Premises in the amount of One and No/100 Dollars (\$1.00).

5. Use Requirements.

A. No helicopter may land if when fully loaded the aircraft weighs more than 6,250 pounds. This is the maximum weight the helipad is designed to accommodate.

B. User shall not permit a helicopter landing piloted by a pilot who does not meet the following minimum requirements: (i) the pilot is a trained law enforcement officer, (ii) the pilot has at least 1,000 hours of documented commercial flight time and (iii) the pilot and the helicopter satisfy the insurance requirements contained herein.

C. User represents and warrants to Owner that:

(i) it is not in violation of any Anti-Terrorism Law;

(ii) it is not, as of the date hereof:

(a) conducting any business or engaging in any transaction or dealing with any Prohibited Person, including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Prohibited Person;

(b) dealing in, or otherwise engaging in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or

(c) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in, any Anti-Terrorism Law; and

(iii) neither User nor any of its affiliates, officers, directors, shareholders, members or lease guarantor, as applicable, is a Prohibited Person.

D. User shall operate in such a manner so that no flight dates and times conflict with any FAA imposed temporary flights restrictions, or any other restriction promulgated by the FAA or any other governmental authority having jurisdiction over the Premises.

E. User shall be solely responsible for the safety of the customers and/or passengers which it transports while such customers and/or passengers are located within the Premises.

6. Release. To the fullest extent permitted by law, User hereby unconditionally and forever relieves, releases and discharges Owner, its constituent partners, shareholders and other direct and indirect equity owners, and each of their respective officers, directors, shareholders, agents and employees (collectively, the "Indemnitees") from any and all losses, liabilities, claims, demands, damages, suits, causes of action, judgments, costs and expenses whatsoever, whether known or unknown, that User may now or at any time in the future incur, whether from loss or damage to person or property or otherwise, arising from, on account of or in any way connected with User's use of the Premises or any activities of User, its agents, contractors, employees, invitees or licensees in or about the Premises.

7. Indemnity. To the fullest extent permitted by law, User shall indemnify, defend and hold the Indemnitees harmless from and against any and all losses, liabilities, claims, demands, damages, suits,

causes of action, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements and court costs) resulting from, on account of or in any way connected with any act or omission of User, its agents, contractors, employees, or invitees, and accident, injury or damage whatsoever occurring in or about the Premises or any use of the Premises by User or anyone claiming under or through User.

8. Insurance. Prior to receiving permission to land on the Landing Pad, User must provide Owner with satisfactory proof that User has at least Commercial Aircraft Liability Insurance in an amount not less than \$5,000,000 per occurrence combined single limit bodily injury and property damage, with a rider on such policy expressly covering aircraft, passenger, baggage, cargo and premises related incidents or occurrences. Owner shall be named as an additional insured on the above insurance policy or any other insurance policy hereafter attained to satisfy the requirements of this Section 8. The policy shall contain a waiver of subrogation clause in favor of Owner and shall provide that each policy is primary and non-contributory to any insurance otherwise carried by Owner. Any insurance coverage described hereunder shall not be acceptable unless it was obtained from an insurance company having an AM Best A+ VIII or better insurance rating and that is licensed to do business in the State of Georgia.

9. Limitation of Liability. In no event shall Owner be liable to User either for (a) any loss or damage that may be occasioned by or through the acts or omissions of tenants or other licensees of the Premises or of any other persons whomsoever, or (b) any consequential damages, regardless of causation.

10. No Implied Waiver. Any failure of Owner to enforce, at any time, or for any period of time, any of the provisions of this Agreement shall not constitute a waiver of such provisions or a waiver of such party's right to enforce each and every provision.

11. Severability. If in any instance any provision of this Agreement shall be determined to be invalid or unenforceable under any applicable law, such provision shall not apply in such instance, but the remaining provisions shall be given effect in accordance with their terms.

12. Entire Agreement. This Agreement supersedes all prior discussions, agreements and understandings between the parties and constitutes the entire agreement between the parties with respect to the transaction herein contemplated. Any modification of this Agreement or any additional obligations assumed by either party in connection with this Agreement shall be binding only if evidenced in writing, signed by each party.

13. Survival of Provisions. Without limiting any other obligation of the User which may survive the expiration or prior termination of the term of this Agreement, all obligations on the part of User to indemnify, reimburse, defend, or hold Owner harmless, as set forth in this Agreement shall survive the expiration this Agreement.

14. Applicable Law. This Agreement shall be governed by the laws of the State of Georgia and shall be binding upon heirs, legal representatives and successors of User and Owner. This Agreement may not be assigned by User.

15. Aircraft Control. Notwithstanding anything in this Agreement to the contrary, Owner shall not be responsible for, nor does it accept, the care, custody, control, safety, or security of any aircraft on the Premises.

By affixing its signature in the space provided below, the undersigned User hereby acknowledges and agrees to each and every term and provision of this Agreement.

USER

By: _____
Name: _____
Title: _____
Date: _____

By affixing its signature in the space provided below, the undersigned Owner hereby grants User permission to land on the Landing Pad.

OWNER

Legacy Pavilion, LLC, a Georgia limited liability company

By: _____
Name: _____
Title: _____
Date: _____

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Exhibit "A"

Rules and Regulations

1. User and User's customers and/or passengers shall keep the Premises free of any debris or residue.
2. All helicopters which land on, and takeoff from, the Landing Pad must be in good working order and meet the requirements of Section 5 of this Agreement.
3. User and User's customers and/or passengers shall not interfere in any way with Hilton's operations, nor shall User and User's customers and/or passengers enter into any portion of the Premises not specifically authorized by Owner or Hilton for such access.
4. Use of the Premises does not permit User and User's customers and/or passengers to use any other portion of the Premises without approval from Owner or Hilton.
5. No landings or takeoffs of a helicopter from the Landing Pad shall be permitted during inclement weather as defined by the National Weather Service as a "severe weather, storm, tornado, or hurricane watch or warning".
6. No fueling shall be permitted within the Premises at any time.
7. No unauthorized person shall be permitted on the Premises, including, without limitation, Hilton personnel.